

ARKANSAS SUPREME COURT

No. CR 05-648 & CACR 04-525

EDWARD LOVELESS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 6, 2008

PRO SE REQUEST FOR
DETERMINATION AND RULING
CONCERNING A REQUEST FOR
EXTRAORDINARY WRIT [CIRCUIT
COURT OF POPE COUNTY, CR 2002-
658, CR 2003-115]

PRO SE REQUEST TREATED AS
SECOND MOTION FOR
RECONSIDERATION AND DENIED.

PER CURIAM

Now before us is a pro se request filed by petitioner Edward Loveless in which he seeks a determination and ruling concerning a prior request for extraordinary writ. For the reasons set forth below, the pro se request is treated as a second motion for reconsideration and denied.

A history of petitioner's filings in this court is helpful in understanding the instant petition. Petitioner appealed from a criminal judgment of conviction to the Arkansas Court of Appeals and the judgment was affirmed. *Loveless v. State*, CACR 04-525 (Ark. App. Mar. 2, 2005). Subsequently, he sought relief pursuant to Ark. R. Crim. P. 37.1 and the trial court denied the petition. Petitioner appealed the denial of the petition to this court. A briefing schedule was set, and petitioner failed to file his brief-in-chief resulting in the dismissal of the appeal. *Loveless v. State*, CR 05-648 (Ark. Jan. 26, 2006) (per curiam).

Prior to the January 26, 2006, dismissal, petitioner filed a number of motions and petitions in the Rule 37.1 appeal. These pleadings included a motion to stay the appeal, a petition for writ of

certiorari to be allowed to pursue a writ of error coram nobis, and a petition to combine the appeal with the petition for writ of certiorari. The motion to stay the appeal and the petition for writ of certiorari were denied, thus the motion to combine the appeal with the petition for writ of certiorari was moot. *Loveless v. State*, CR 05-648 (Ark. Oct. 20, 2005) (per curiam). The dismissal of the appeal decided on January 26, 2006, also denied a motion for reconsideration of the October 20, 2005, decision.

Thereafter, petitioner filed in this court two petitions requesting a copy of the records on file with this court, including trial transcripts. Petitioner did not identify the appellate case to which he referred, so the petitions were considered as to both the criminal and postconviction cases.

On January 16, 2007, petitioner filed a “petition for use of transcript” in this court. Petitioner made no demonstration of some compelling need for specific documentary evidence to support a claim for postconviction relief, and no petition for postconviction relief was pending at that time. Therefore, the petition was denied. *Loveless v. State*, CR 05-648 and CACR 04-525 (Ark. Feb. 1, 2007) (per curiam) (citing *Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam)). In that ruling, we also stated that access to the record would entail photocopying any materials requested, and that petitioner was not entitled to photocopying at state expense, following the ruling in *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam).

Next, petitioner filed a “petition for rehearing and request for extraordinary writ” on February 15, 2007, which we treated as a motion for reconsideration of our February 1, 2007, denial of the January 2007 petition. That motion for reconsideration reiterated a request for the records in his appeals, and added that petitioner only sought use of the electronic forms of the documents. In denying the motion for reconsideration, we held that no electronic forms of documents are maintained

by our clerk, and that petitioner did not establish a compelling need for specific documentary evidence to support a claim for postconviction relief. *Loveless v. State*, CR 05-648 and CACR 04-525 (Ark. Mar. 1, 2007) (per curiam).

Now before us is petitioner's "request for determination and ruling concerning a request for extraordinary writ filed February 15, 2007" filed on December 20, 2007. In this pleading, it is not clear as to the kind of relief that is being requested or the exact nature of the request. First, petitioner refers to the February 15, 2007, pleading as an independent request for relief, although we treated that pleading as a motion for reconsideration of our denial of the January 2007 petition. Next, petitioner contends that this court misinterpreted his prior pleadings. He complains that he has been deprived of various documents and access to the case records, and seeks reconsideration of his prior petition. The underpinning of the petition before us is appellant's use of a trial transcript. Thus, we determine that the relief requested is most likely intended to be a second motion for reconsideration of the denial of the January 2007 petition.¹

Although petitioner insists to the contrary, no documents contained in the records maintained by our clerk are available by electronic means. As a result, use of a trial transcript or record on appeal requires actual physical access to the documents. Because only licensed attorneys may check out a record from the clerk's office, and petitioner is incarcerated and cannot come to the clerk's office to examine the record, the only relief that can be afforded him is to make a photocopy of the material. We are therefore required to treat his petition as one for a photocopy of the record on appeal, which is the same request made in the January 2007 petition and the February 2007 motion

¹Petitioner also complains in the present motion that we neglected to rule on his extraordinary writ request. At no point has petitioner explained the meaning or precise function of an "extraordinary writ," but he does reiterate his request for use of a transcript.

for reconsideration.

Here, petitioner has not made a showing of entitlement to a copy of the records from his prior appeals. He has failed to show some compelling need for specific documentary evidence to support a claim for postconviction relief, and no postconviction petition is pending at this time. *Austin, supra*. Also, petitioner is not entitled to photocopying at state expense. *Moore, supra*. Therefore, petitioner has not demonstrated that there was some error of fact or law in the February 1, 2007, decision that would merit reconsideration of the denial of the January 2007 petition for access to the material on file here.

Pro se request treated as second motion for reconsideration and denied.